



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

SOUTH CENTRAL REGIONAL OFFICE
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Robert G. Burnley
Director

Thomas L. Henderson
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

A SPECIAL ORDER BY CONSENT ISSUED TO

**Midkiff Farm, Inc.
Registration Number VPG270014**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Midkiff Farm, Inc. for the purpose of resolving violations of State Water Control Law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizen board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Midkiff" means Midkiff Farm, Inc. a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the Midkiff farm located in Cumberland County, Virginia, which is owned, operated, and controlled by Midkiff Farm, Inc.

8. "SCRO" means the South Central Regional Office of the DEQ, located in Lynchburg, Virginia.
9. "Permit" means an authorization, certificate, license, or equivalent control document issued by the Board to implement the requirements of Va. Code § 62.1-44.17:1.1, which includes the Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management ("VPG").
10. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Facts and Conclusions of Law

1. Midkiff owns and operates a broiler operation in conjunction with Tyson Foods. The Facility is located near the intersection of route 627 and 622 in Cumberland County, Virginia. The operation consists of four houses with approximately 20,000 chickens each for an annual average of 80,000 chickens; the Nutrient Management Plan allows for a maximum of 85,000 birds. Midkiff averages five flocks per year.
2. Responding to a pollution complaint the DEQ inspected the Facility on February 7, 2005. The complaint alleged that dead chickens were being buried in metal feed bins near the Midkiff farm pond. The farm pond flows into an unnamed tributary of the Willis River.
3. During the inspection the DEQ verified that Midkiff had indeed disposed of approximately 500 dead chickens in the manner described in the complaint. The DEQ did not observe any impact to surface waters; however, such illicit disposal of dead chickens could pose a risk for groundwater contamination and to public health. The proper disposal of dead chickens covered under the VPG General Permit are by composting, incineration, or rendering; on the registration statement for VPG General Permit Midkiff chose to compost. The DEQ informed Midkiff that compost pile(s) should have been created in the litter storage building until space was available in the composter.
4. Part I B.6 of the VPG General Permit states that, "[c]onfined poultry feeding operations that use disposal pits for routine disposal of daily mortalities [i.e., dead chickens] shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily mortalities by a permittee shall be considered a

violation of this permit. *This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.1-726 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.*”

(Emphasis added.)

5. Va. Code § 62.1-44.17:1.1.E states that, “[a]fter October 1, 2001, all persons owning or operating a confined poultry feeding operation shall operate in compliance with the provisions of this section and any regulations promulgated thereunder.” The Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management is a regulation promulgated under this section.
6. Va. Code § 62.1-44.3 defines “person” as “an individual, corporation, partnership, association, governmental body, municipal corporation or any other legal entity.” Midkiff is a “person” within the meaning of State Water Control Law.
7. Therefore, on March 11, 2005, the DEQ issued Notice of Violation (“NOV”), number NOV-05-03-SCRO-001, for the improper disposal of dead chickens.
8. Midkiff responded to the NOV in a letter dated March 28, 2005, stating that an unusual amount of dead chickens occurred and the composters were full, and “[i]t was not intended to be used as a daily disposal site *but for emergency disposal only.*” (Emphasis added.)
9. The emergency disposal claimed by Midkiff is not an emergency within the meaning of Va. Code § 3.1-726 and Va. Code § 10.1-1400 *et seq.* and the regulations promulgated thereunder. Va. Code § 3.1-726 and the regulations thereunder govern the emergency disposal of dead animals related to contagious and infectious diseases. The regulations promulgated under Va. Code § 10.1-1400 *et seq.* provide for emergency permits where the Director “finds an imminent and substantial endangerment to human health or the environment” (*See* 9 VAC 20-80-485.B), and govern the disposal of dead animals at sanitary landfills (*See* 9 VAC 20-80-250.C .16.o).

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted in Va. Code § 62.1-44.15(8a) and (8d), orders Midkiff, and Midkiff consents, to pay a civil charge of \$1,750.00 within 30 days of the issuance of this Order in settlement of the violations cited herein. The

payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

The payment shall include Midkiff's Federal Identification Number and shall state that it is being tendered in payment of the civil charge assessed under this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the Midkiff, for good cause shown by Midkiff, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect enforcement actions by other state, local, or federal regulatory authorities, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Midkiff admits to the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Midkiff consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Midkiff declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the State Water Control Law, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to

any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Midkiff to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Midkiff shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or other such occurrence. Midkiff shall demonstrate that such circumstances resulting in noncompliance were beyond the control of Midkiff and not due to a lack of good faith or diligence on its part. Midkiff shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - a. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition listed above, which Midkiff intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns jointly and severally.
10. This Order shall become effective upon execution by the Director, or his designee, and Midkiff.

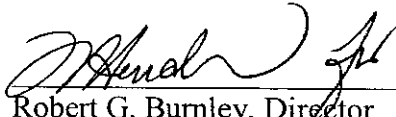
11. This Order shall continue in effect until:

- a. Midkiff petitions the Regional Director to terminate the Order after it has completed all requirements of the Order and the Director, or his designee, approves the termination of the Order; or
- b. The Director or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Midkiff.

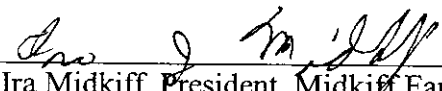
Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Midkiff from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Midkiff consents to the issuance of this Order.

And it is so ORDERED this 29th day of September, 2005.


Robert G. Burnley, Director
Department of Environmental Quality

Midkiff consents to the issuance of this Order.

Date: 6-3-05 By: 
Ira Midkiff, President, Midkiff Farm, Inc.

Commonwealth of Virginia
City/County of Cumberland

The foregoing document was signed and acknowledged before me this 3rd day of June, 2005, by Ira Midkiff, President, Midkiff Farm, Inc., on behalf of said corporation.


Notary Public

My commission expires: 10-31-2005.